

LATANIA ALSTON,	§	
	§	No. 107, 2012
Plaintiff Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
KENYETTA ALEXANDER,	§	C.A. No. N10C-03-010
	§	
Defendant Below-	§	
Appellee.	§	

Decided: July 25, 2012

ORDER

(1) Latania Alston, Plaintiff-Below, appeals from the Superior Court’s grant of summary judgment in favor of Defendant-Below Kenyetta Alexander, in this negligence action for personal injuries sustained in an automobile accident. Alston raises one claim on appeal. Alston contends that the Superior Court erred in upholding the validity of a general release signed by Alston and granting summary judgment in Alexander’s favor on that basis. We find no merit to Alston’s appeal and affirm.

(2) This dispute arises from a collision between Alexander and Lisa Johnson's vehicles.¹ Alston was a passenger in Alexander's vehicle. After the accident, Alston received treatment at the Emergency Department of Christiana Hospital. At the time, she complained of musculoskeletal symptoms, specifically head, chest, and hip pain. The x-rays of her chest and hip showed no abnormalities. She was diagnosed with chest wall and hip contusions and was prescribed pain medications and muscle relaxants. She was released the same day with the following discharge instructions:

It does not appear that your chest pain is from a more serious cause. However, that possibility must be considered if your pain worsens or persists. . . .

The treatment of your hip injury . . . and the need for follow-up with your doctor or an orthopedist depends on the severity and the kind of injury. This is often impossible to tell for sure soon after the injury. If the injury seems not serious at first, the possibility of a major injury must always be kept in mind. You may need further evaluation and testing by an orthopedist.

The discharge papers also instructed Alston to seek further medical attention if certain different or worsening symptoms arose. Although she did not report any pain in her neck or back at the time of treatment, Alston alleges that she developed these symptoms in the twenty-four to forty-eight hours following the accident.

¹ These facts are taken from the Superior Court's memorandum opinion. *See Alston v. Alexander*, 2011 WL 1225555 (Del. Super. Mar. 29, 2011). Johnson is not a party to this appeal.

(3) On the day after the accident and Alston's release from the hospital, an insurance adjuster from Alexander's insurer, State Farm Mutual Automobile Insurance Company ("State Farm"), left a voicemail for Alston. Alston returned the call and spoke with a State Farm claim specialist, Lisa Hantman. Alston described her visit to the hospital. She said that she suffered a contusion to her right thigh and head, and felt sore. Alston then inquired about compensation for lost wages. Hantman explained the difference between personal injury claims and Personal Injury Protection ("PIP") claims for medical expenses and lost wages. Alston was referred to another adjuster to discuss the PIP component of her claim.

(4) After hearing Alston describe her injuries, Hantman offered to settle Alston's personal injury claim for \$500. Alston indicated that she wanted to settle the claim, but was undecided about whether to come to State Farm's office immediately or have State Farm send her a release in the mail. Later that afternoon, Alston arranged for a ride to State Farm's office.

(5) As part of standard State Farm procedure, Alston was asked to execute a release of claims before receiving her check. The release was a single-page document which recited the following:

For the Sole Consideration of \$500.00 FIVE HUNDRED AND 00/100 Dollars the receipt and sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges KENYETTA ALEXANDER, [her] heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or, who might claimed to be liable, none

of whom admit any liability to the undersigned but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an accident which occurred on or about the 24th day of June, 2008 at or near WILMINGTON, DE.

This release expressly reserves all rights of the parties released to pursue their legal remedies, if any, against the undersigned, their heirs, executors, agents and assigns.

Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims, disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident.

Undersigned hereby accepts draft or drafts as final payment of the consideration set forth above.

According to Hantman, Alston reviewed the release, signed it, and received her settlement check. Although Alston recalls signing the release and acknowledges that it contains her signature, she testified at her deposition that she did not read it. Shortly after signing the release, Alston cashed the check.

(6) Alston brought this negligence action against both Alexander and Johnson, seeking damages for bodily injury and medical expenses arising from the accident. Alexander filed a motion to dismiss or for summary judgment pursuant to Superior Court Civil Rules 12(b)(6) and 56, asserting that the general release

discharged Alexander from any and all claims arising out of the accident. The Superior Court granted summary judgment in Alexander's favor. This appeal followed.

(7) We review the Superior Court's grant of summary judgment *de novo* "to determine whether, viewing the facts in the light most favorable to the nonmoving party, the moving party has demonstrated that there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law."² Delaware courts will uphold a valid general release.³ A plaintiff may only set aside a clear and unambiguous release "where there is fraud, duress, coercion, or mutual mistake concerning the existence of a party's injuries."⁴

(8) Alston argues that the defense of mutual mistake applies here because the release was executed only twenty-two hours after the accident, when the full extent of her injuries was not known to the parties. At the time the release was executed, she suffered only head, chest, and hip pain. Her neck and back problems had not yet surfaced. Thus, Alston argues, she and the adjuster were acting under a mutual mistake as to the extent of Alston's injuries.

² *State Farm Mut. Auto. Ins. Co. v. Patterson*, 7 A.3d 454, 456 (Del. 2010) (quoting *Brown v. United Water Delaware, Inc.*, 3 A.3d 272, 275 (Del. 2010)).

³ *Deuley v. DynCorp Int'l, Inc.*, 8 A.3d 1156, 1163 (Del. 2010); *Webb v. Dickerson*, 2002 WL 388121, at *3 (Del. Super. Mar. 11, 2002); *Reasin v. Moore*, 1989 WL 41232, at *1 (Del. Super. Mar. 20, 1989); see *Chakov v. Outboard Marine Corp.*, 429 A.2d 984, 985 (Del. 1981); *Hob Tea Room v. Miller*, 89 A.2d 851, 856 (Del. 1952).

⁴ *Deuley*, 8 A.3d at 1163 (citing *Parlin v. DynCorp Int'l*, 2009 WL 3636756, at *3 (Del. Super. Sept. 30, 2009)); see *Reason v. Lewis*, 260 A.2d 708, 709–10 (Del. 1969); *Webb*, 2002 WL 388121, at *6.

(9) For mutual mistake to constitute grounds for avoiding a release, “the mistake must relate to a past or present fact material to the contract.”⁵ “A mistake as to the future unknowable effect of existing facts, a mistake as to the future uncertain duration of a known condition, or a mistake as to the future effect of a personal injury” does not constitute a mutual mistake.⁶

(10) The Superior Court properly rejected Alston’s mutual mistake argument below, explaining that Alton’s subsequent complaints were not indicative of a new injury, but rather were related to the original trauma. Alston relies on *Reason v. Lewis* and *Webb v. Dickerson*, but both cases are distinguishable. In *Reason v. Lewis*, this Court found grounds for invalidating a release based on mutual mistake as to the existence of plaintiff’s injuries.⁷ There, “both the plaintiff and the insurance adjuster thought that the plaintiff had been discharged from all further medical treatment or was about to be discharged.”⁸ Neither was aware that the plaintiff had sustained a nerve injury.⁹ Likewise, in *Webb*, neither party was aware of the plaintiff’s undiagnosed neurological injury.¹⁰ Here, Alston has not presented evidence of a new diagnosis. She suffered from

⁵ *Reasin*, 1989 WL 41232, at *1 (citing *Tatman v. Phila., B. & W.R. Co.*, 85 A. 716, 718 (Del. Ch. 1913)).

⁶ *Id.* at *2.

⁷ 260 A.2d 708, 709–10 (Del. 1969).

⁸ *Id.* at 709.

⁹ *Id.*

¹⁰ *Webb*, 2002 WL 388121, at *4 (denying summary judgment where neither plaintiff nor adjuster knew at time release was executed that plaintiff had suffered disc injury and nerve damage).

musculoskeletal pain in her chest and hip at the time of her release from the hospital, and now alleges that she also suffers from such pain in her neck and back. She was instructed that it might be difficult to ascertain the extent of her injuries immediately after leaving the hospital. Nonetheless, she chose to execute the release and accept compensation within one day of the accident. Although she produced evidence of pain in new areas of her body, that evidence demonstrates at most “a mistake as to the future effect of a personal injury.”¹¹ It does not provide a basis for invalidating the release.

(11) Alston also contends that the release should be invalidated on grounds of duress. Alston argues that the State Farm representative contacted her, and enticed her with the promise of financial compensation. Alston had no legal counsel, and argues that she had no understanding that signing the release would terminate her right to recover.

(12) The defense of duress does not apply on these facts. Alston decided to sign the release the day after the accident rather than wait for a copy to be sent in the mail. She has not alleged that she was subjected to physical force or had taken medication that prevented her from understanding the release’s implications. This case is easily distinguishable from *Webb*. There, the insurance adjuster

¹¹ See *Reasin*, 1989 WL 41232, at *2.

approached the plaintiff in person within twenty-four hours of the accident.¹² The plaintiff had taken narcotic and muscle relaxant medication for his injuries, and was experiencing pain.¹³ The Superior Court found a general issue of material fact as to whether the plaintiff was under duress when he executed the release.¹⁴ Here, however, Alston voluntarily went to the State Farm office to retrieve the check and sign the release. The Superior Court properly distinguished *Webb* on the basis that, in this case, the plaintiff was the party who chose to expedite the process.

(13) The release that Alston signed was a one-page document clearly stating that Alston was forgoing any claims against Alexander for any injuries, known and unknown, related to the accident. Alston cannot seek to invalidate the release merely because she chose not to read it before signing it. The Superior Court properly determined that Alston could not prevail on a defense of duress so as to invalidate the release.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹² *Webb*, 2002 WL 388121, at *1–2.

¹³ *Id.* at *2–3.

¹⁴ *Id.* at *7.